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SC PUBLIC SERVICE
COMMISSION

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RICHARD K. ALLEN, JR.*
JAMES S. EAKES*
THOMAS ALLEN (1881-1963)
RICHARD K. ALLEN (1921-1982)

* CERTIFIED CIVIL COURT MEDIATOR

November 3, 2014

Jocelyn Boyd, Chief Clerk/Administrator
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

**RE: Village Overlook Condominium Association -vs- JACABB
Utilities, LLC (Docket Number: 2014-393-S)**

Dear Ms. Boyd:

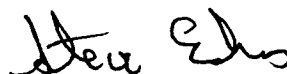
Please find enclosed herewith the original and three (3) copies of the answer of JACABB Utilities, LLC in the above-referenced matter. I have also enclosed a certificate of service by mail and three (3) copies. If you require additional copies, please advise and I will forward them to you.

I would appreciate it if you would return a "clocked" copy of this letter to me in the self-addressed, stamped envelope enclosed for your convenience.

If you require anything further or have any questions or concerns, do not hesitate to contact me.

Sincerely yours,

ALLEN AND EAKES



James S. Eakes

JSE/ecc

Enclosures

Cc: John F. Beach, Esquire
Shannon B. Hudson, Esquire
Steve Goldie

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2014-393-S

IN RE:)
)
Village Overlook Condominium)
Association,)
Complainant/ Petitioner,)
)
) **ANSWER OF**
) **JACABB UTILITIES, LLC**
v.)
)
JACABB Utilities, LLC,)
)
Defendant/Respondent.)
)

The Defendant/Respondent, JACABB Utilities, LLC, answering the complaint of the Complainant/Petitioner, would respectfully allege and show as follows:

FOR A FIRST DEFENSE

1. The Complainant/Petitioner, the Village Overlook Condominium Association, is hereinafter referred to as "VOCA", and the Defendant/Respondent, JACABB Utilities, LLC, is hereinafter referred to as "UTILITY".

2. All of the allegations of the complaint, not hereinafter specifically admitted, modified, or explained, are denied.

3. The Utility specifically denies all of the allegations throughout the complaint that its sewer availability fees are unlawful or improper and would show that its sewer availability fees have been properly approved by The Public Service Commission of South Carolina (hereinafter "PSC").

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4. The Utility denies all of the allegations of the VOCA contained on page 1 of the complaint and denies that the VOCA is entitled to the requested relief.

5. The Utility further denies all of the allegations of the VOCA on page 2 of the complaint. Specifically, the Utility denies all of the allegations of subparagraphs a., b., c., d., e., and f., under the heading "VOCA is entitled to requested relief for the following reasons:".

AS TO THE REMAINING ALLEGATIONS
OF THE COMPLAINT

6. Responding to paragraph 1 of the complaint, the Utility admits the general allegations of said paragraph. More specifically, the Utility would show that the Village Overlook Condominium project was created by a master deed of the "Village Overlook Horizontal Property Regime" executed by Cliffs Construction, LLC (the "Developer") dated January 14, 2009, and recorded on January 15, 2009, in the Office of the Register of Deeds for Greenville County, South Carolina ("R.O.D. Office") in Deed Book 2351 at Pages 5063-5154. The master deed provided for construction of sixty (60) condominium units with a possible expansion to sixty-four (64) units. The master deed was amended six (6) times as follows:

First Amendment dated March 24, 2009, recorded March 25, 2009, in the R.O.D. Office in Deed Book 2354 at Pages 5640-5646;

Second Amendment dated September 29, 2009, recorded October 1, 2009, in the R.O.D. Office in Deed Book 2362 at Pages 4874-4880;

Third Amendment dated November 19, 2009, recorded November 19, 2009, in the R.O.D. Office in Deed Book 2364 at Pages 5659-5661;

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Fourth Amendment dated November 24, 2009, recorded November 24, 2009, in the R.O.D. Office in Deed Book 2365 at Pages 638-662;

Fifth Amendment dated January 15, 2010, recorded January 19, 2010, in the R.O.D. Office in Deed Book 2367 at Pages 1455-1468; and

Sixth Amendment dated August 9, 2010, recorded August 10, 2010, in the R.O.D. Office in Deed Book 2376 at Pages 2423-2436.

Reference is invited to the master deed and the amendments thereto for their exact terms, and the terms of said public records are incorporated herein by reference.

7. Responding to paragraph 2 of the complaint, the Utility admits that the Village Overlook Condominium Association ("VOCA") was incorporated on August 20, 2008, as an eleemosynary corporation before any units were constructed or sold, and the by-laws for the VOCA were incorporated into and made a part of the recorded master deed. The membership and governance of the VOCA are controlled by the master deed, by-laws, records on file with the Secretary of State, and applicable law. The Utility is uninformed as to the remaining allegations of said paragraph 2 and, therefore, denies all remaining allegations thereof.

8. The Utility admits only so much of paragraph 3 of the complaint as alleges that Cliffs Construction, LLC, Developer, constructed twenty (20) condominium units consisting of five (5) buildings containing four (4) units each. Reference is invited to the certificates of occupancy and the recorded deeds for the exact dates of completion and sale for each additional unit. All remaining allegations of said paragraph 3 are denied.

9. Responding to paragraph 4 of the complaint,

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Utility admits that no other units were constructed, and the remaining property is undeveloped.

10. The Utility is uninformed as to the allegations of paragraph 5 of the complaint except that, pursuant to a judgment and order of foreclosure sale in a mechanic's lien foreclosure action against the Developer, a Master-In-Equity Deed dated June 19, 2012, and recorded January 25, 2012, in the R.O.D. Office in Deed Book 2407 at Pages 4404-4406 conveyed the remaining undeveloped property, possibly including common area, to William Marcus & Associates, Inc., for the consideration of \$5,000.00. Subsequent thereto, a quit-claim deed was executed by the Developer, Cliff's Construction, LLC, dated May 7, 2013, to William Marcus & Associates, Inc., and said quit-claim deed was recorded on May 8, 2013, in the R.O.D. Office in Deed Book 2423 at Pages 5826-5830. The Utility has no knowledge of the alleged bankruptcy and, therefore, denies all remaining allegations of said paragraph 5. Reference is invited to the recorded deeds and the records on file for the mechanic's lien foreclosure action with the Greenville County Clerk of Court under Case Number: 2011-CP-23-0571, and the matters of public record are incorporated herein by reference.

11. Responding to paragraph 6 of the complaint, the Utility had no knowledge of the operation of the VOCA either before or after the condominium units were purchased and no knowledge of whether or not a board of directors had been elected for the VOCA pursuant to the master deed and by-laws and no reason or obligation to contact or communicate with the condominium owners. The Utility is unaware when the condominium owners first became aware of the availability fees. All other allegations of said paragraph 6 are denied. Everything alleged in this paragraph

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were matters between the developer, sub-developer, real estate agents and condominium owners/purchasers, and matters that could have been determined from the public records. The Utility would show that, after it was first contacted by the condominium owners, it made full disclosure of all available information to the owners including meetings with the owners.

12. The Utility admits the allegations of paragraph 7 of the complaint and refers to the records and orders on file with the PSC for their exact terms.

13. Answering paragraph 8 of the complaint, the Utility admits that on June 13, 2008, the PSC issued Order No. 2008-422 under docket number: 2003-277-S authorizing the Utility to begin charging "Phase 2" rates of \$53.16 per month and that the "Phase 2" rates were approved for the Village Overlook Condominiums by order of the PSC dated August 5, 2009, under Docket Number: 2009-238-S (Order Number: 2009-518) which also approved the availability fees which are a part of the "tariffed rates". Utility is legally authorized to charge the availability fees pursuant to the order of the PSC dated August 5, 2009. All other allegations and inferences of said paragraph 8 are denied.

14. In response to paragraph 9 of the complaint, the Utility admits that it entered into a properly executed and legally binding Sewer Service Agreement dated March 3, 2009, with the Cliffs at Mountain Park, LLC, and that it entered into a subsequent properly executed and legally binding Sewer Service Agreement with the Village Overlook Condominium Association dated April 24, 2009, pursuant to the Cliff's Agreement. The Utility would show that the VOCA was a nonprofit corporation incorporated and existing under the laws of the State of South Carolina at the time of the

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Sewer Service Agreement, and Utility refers to the Articles of Incorporation and Articles of Amendment on file with the South Carolina Secretary of State and the Master Deed for the legal authority of the VOCA to enter into the Sewer Service Agreement. The Sewer Service Agreement dated April 24, 2009, was a legally binding contract between the Utility and VOCA. Except as admitted or modified herein, all of the allegations and inferences of said paragraph 9 are denied.

15. The Utility admits the allegations of paragraph 10 of the complaint and refers to the order and records on file with the PSC under Docket Number: 2009-238-S for their exact terms.

16. Responding to paragraph 11 of the complaint, the Utility admits only so much of said paragraph as alleges that, at the time of its June 2009 application, no condominium units had been constructed or sold. All remaining allegations and inferences of said paragraph 11 are denied. The VOCA was a legal entity as reference to the filings with the Secretary of State will reveal.

17. The allegations of paragraph 12 fo the complaint are denied. The Agreement for Sewer Services dated March 3, 2009, with the Cliffs at Mountain Park, LLC, provides, in part as follows in Article IV:

"5. The Developer may transfer capacity in the WWTP to sub-developers with the written permission of the Utility. In the event that a portion or portions of the WWTP capacity are transferred to sub-developers, the Sub-developer must sign a utility service agreement with the Utility. The Sub-developer would be responsible for the availability fees at the same rates as those provided in this Agreement, and the customers in the sub-developed area would receive

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the same sewer service rates as the provided in this Agreement.

6. Availability Fees and sewer service rates are as follows:

Phase I: Of the WWTP capacity of 27,000gpd, it is anticipated that 18,000gpd will be allocated for the Village Overlook Condominiums and 9,000gpd for amenities and/or other residential units at the Cliffs Mountain Park development. For the 18,000 gpd for the Village Outlook Condominiums, its Property Owner's Association, the Village Overlook Condominium Association (VOCA), will enter into a Sewer Service Agreement with and pay the Utility an availability fee in the amount of fifty-three and 16/100 dollars (\$53.16) per month per residential unit for a minimum of sixty (60) units if residential sewer service is available but not used, until the residential unit is sold. As the residential units are sold, the VOCA will be responsible for paying the applicable sewer fee, which is also fifty-three and 16/100 Dollars (\$53.16) per month. In the event that the sub-developer elects to build less than 60 units, the availability fee for all 60 units will remain in effect. Also, the Developer agrees to pay an availability fee of \$53.16/month for the equivalent of 25 additional customers at 360 gpd each for the remaining 9,000 gpd of capacity on the system until the residential/commercial unit is sold or occupied. As these other residential or commercial customers are added, the Owners of these units will pay \$53.16 per month sewer charge for residential service or

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\$53.16 per 360gpd for commercial service. This rate structure will remain in effect for both VOCA and the Developer until the Phase II wastewater treatment plant becomes operational at which time the rate structure will be revised as described in the following paragraph".

The VOCA Sewer Service Agreement was part of, and included as a part of, the Cliff's at Mountain Park Sewer Service Agreement and submitted for approval to the PSC. The order of the PSC under Docket Number: 2009-238-S clearly approved the VOCA Sewer Agreement dated April 24, 2009, and it was clearly part and parcel of the Mountain Park Sewer Agreement. The VOCA Sewer Agreement was executed to comply with and implement the terms of the Cliff's at Mountain Park Sewer Service Agreement.

18. The allegations of paragraph 13 of the complaint are admitted. However, reference is made to the order, application, and other records on file with PSC for their exact terms.

19. All of the allegations of paragraph 14 of the complaint are denied.

20. In response to paragraph 15 of the complaint, the Utility admits the terms of its VOCA Sewer Service Agreement and denies all remaining allegations of said paragraph 15. The availability fees were approved and authorized by the PSC as part of its order.

21. The allegations of paragraph 16 of the complaint are denied for the reasons set forth hereinabove. The availability fees have been approved and authorized by the PSC.

22. The allegations of paragraph 17 of the complaint are generally correct. However, availability fees are also

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necessary to insure that the Utility can provide the agreed upon sewer service and to remain viable and financially able to provide the agreed upon sewer service.

23. Responding to paragraph 18 of the complaint, the Utility again admits the terms of its Sewer Agreements with the Cliff's at Mountain Park and the VOCA and all orders and records on file with the PSC. Any allegations or inferences of said paragraph 18 to the contrary are denied.

24. Responding to paragraphs 19 and 20 of the complaint, Utility would show as follows:

VOCA Billing History

End of 2009 monthly invoices of \$3,189.60 for VOCA Sewer (included both sewer service and availability fee) were submitted to:

Village Overlook Condominium Assoc.

Attention: Kristopher Clark

3598 Hwy 11

Travelers Rest, SC 29690

Per Customer- Invoices for billing Cycle 6/26/12 and 7/27/12 were submitted to address above without ATTN line.

Per Customer- Invoices for billing Cycle beginning 8/30/12 were submitted to the address above with ATTN: Marty Ritsch.

Per Customer- Invoices for billing cycle beginning 5/29/13 were submitted to:

Village Overlook Condominium Assoc.

% Carlton Property Services

Scott Carlton

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722 East McBee Ave.
Greenville, SC 29601

Per Customer- For billing cycle 8/27/13 the Customer requested the VOCA Sewer account be divided into two accounts:

VOCA Sewer Residential (\$1,063.20 per month) and
VOCA Sewer Availability (\$2,126.40 per month)

Billing Address for both accounts were:

Village Overlook Condominium Assoc.

% Carlton Property Services

Scott Carlton

722 East McBee Ave.

Greenville, SC 29601

It was not the Utility's responsibility to determine who made the payments. All remaining allegations and inferences of said paragraphs 19 and 20 are denied.

25. The Utility admits the allegations of paragraph 21 of the complaint. However, Utility has submitted invoices through October 28, 2014. The portion of the bills for the residential units are current, and the availability fees have been delinquent since May, 2013, when the last availability payment was received.

26. Responding to paragraph 22 of the complaint, the Utility would show that it is billing the VOCA as per the approved agreements for the twenty (20) completed condominium units (i.e., "residential") and, also, for the approved availability fees which are part of its tariffed rates for the Village Overlook Condominium development. All remaining allegations of said paragraph 22 are denied. Utility is charging according to its agreement and the rates and availability fees approved by PSC.

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27. Answering paragraph 23 of the complaint, Utility again admits the terms of its approved agreements set forth hereinabove and the terms of the order of PSC. All other allegations and inferences of said paragraph 23 are denied.

28. The Utility is unaware of what representations Anthony made to the VOCA and, therefore, denies the allegations of paragraph 24 of the complaint. Utility is informed and believes that the main sewer infrastructure has been installed, but not the customer service lines for the undeveloped units.

29. Regarding paragraph 25 of the complaint, Utility refers to the master deed, amendments to the master deed, and other recorded deeds for ownership of the undeveloped property and common areas, and denies all remaining allegations and inferences of said paragraph 25. The VOCA Sewer Service Agreement as approved by PSC in a valid, binding and enforceable contract.

30. In response to paragraph 26 of the complaint, Utility again would show that the availability fees are being charged as per its approved sewer agreement with VOCA and in accordance with the terms of the approved agreement. All other allegations and inferences of said paragraph 26 are denied.

31. All of the allegations of paragraphs 27, 28. And 29 of the complaint are denied.

32. Utility denies the allegations of paragraph 30 of the Complaint and requests that the complaint be dismissed because it is without legal or factual basis.

FOR A SECOND DEFENSE

33. All of the allegations of the prior defenses are incorporated and realleged herein to the same extent as if

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repeated verbatim.

34. Utility is informed and believes that the Order (Order Number 2009-518) of the Public Service Commission of South Carolina dated August 5, 2009, under Docket Number: 2009-238-S approving the Cliff's Sewer Agreement dated March 3, 2009, and approving the VOCA Sewer Agreement dated April 24, 2009, is *res judicata* and conclusive as to the rights of the parties or their privies to this proceeding.

FOR A THIRD DEFENSE

35. All of the allegations of the prior defenses are incorporated and realleged herein to the same extent as if repeated verbatim.

36. The master deed, amendments to the master deed, filings with the Secretary of State, by-laws of the VOCA, and the orders and records of the PSC are all matters of public record and were available to the condominium owners when they purchased their individual units. It was the responsibility of said owners to inform themselves of these matters and make proper inquiry prior to purchasing their units.

37. Utility was never contacted by said owners prior to their purchasing the individual units.

38. The Utility is an "innocent" party, and its sole responsibility is to provide sewer service in accordance with the terms of its agreements as approved by the PSC and its established rates, including availability fees, as approved by PSC.

39. The Utility has been operating the WWTF servicing the VOCA owners at a substantial loss since May, 2013, when payment of the availability fees ceased. It cannot remain viable and continue to provide the required sewer service to the VOCA owners while operating at a substantial loss. This

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is not in the public's best interests and will not serve the public convenience and necessity.

40. The Utility is informed and believes that the VOCA's sole recourse should be against the developer, sub-developer, and current owner of the undeveloped VOCA property in a court of competent jurisdiction. Utility is informed and believes that William Marcus & Associates, Inc., owner of the undeveloped property, is subject to the terms of the master deed and amendments thereto, and as such is a member of the VOCA and subject to its by-laws.

41. VOCA has improperly tried to shift their problem to the Utility where the Utility had no part in the development, marketing, or sale of said condominiums.

42. The complaint fails to allege a legitimate cause of action against Utility, and the Utility has been required to incur attorney's fees and costs in defending this action.

43. The complaint should be dismissed for failure to state a cause of action and for failure to allege facts upon which relief can be granted.

FOR A FOURTH DEFENSE

44. All of the allegations of the prior defenses are realleged and incorporated herein to the same extent as if repeated verbatim.

45. For all of the reasons set forth hereinabove, the VOCA should be estopped from bringing this action against Utility.

FOR A FIFTH DEFENSE

46. All of the allegations of the prior defenses are realleged and incorporated herein to the same extent as if repeated verbatim.

47. More than five (5) years have elapsed since the

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approval of Utility's rates for the VOCA, including availability fees, and the VOCA's action is barred by the applicable statute of limitations and/or by laches.

48. The VOCA is judicially estopped from contesting the rates and availability fees properly approved by the PSC.

WHEREFORE, the Defendant/Respondent prays:

1.) That the complaint of the Complainant/Petitioner be dismissed in its entirety with costs.

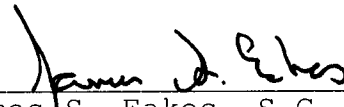
2.) That the prior order approving the sewer agreements be confirmed and continued in full force and effect including all rates and availability fees.

3.) That the rates previously approved, including availability fees, be confirmed and continued in full force and effect.

4.) For such other and further relief as to the Commission seems just and proper.

Respectfully Submitted,

ALLEN AND EAKES



October 22, 2014
Anderson, South Carolina

BY: James S. Eakes, S.C. Bar # 1820
Attorneys for Complainant/
Petitioner
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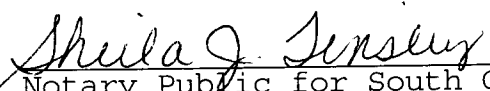
STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF ANDERSON)

The undersigned personally appeared before me and upon being duly sworn, says that he is the Managing Member of JACABB Utilities, LLC, the Defendant/Respondent in this action; that he has read the foregoing Answer and the same is true of his own knowledge, except those matters and things therein alleged on information and belief and as to those he believes them to be true.

JACABB Utilities, LLC

By: 
Stephen R. Goldie
Managing Member

SWORN to before me, this 3
day of November, A. D., 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/22/2016.

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